

American Civil  
Liberties Union  
of New Jersey  
Foundation

35 Halsey Street  
Suite 4B

Newark, NJ  
07102

Tel 973 642 2086  
Fax 973 642 6523

info@aclu-nj.org  
www.aclu.org

ELLEN SAMUEL  
President

DEBORAH JACOBS  
Executive Director

EDWARD BAROCAS  
Legal Director

J.C. SALYER  
Staff Attorney

Contributions to the  
ACLU-NJ Foundation  
are tax-deductible  
to the extent  
permitted by law

Honorable Sharpe James  
Mayor, City of Newark  
City Hall; Room 201  
920 Broad Street  
Newark, NJ 07102

Re: Media Coverage of the 2002 Mayoral Race

Dear Mayor James:

The American Civil Liberties Union of New Jersey has been contacted by Marshall Curry, a documentary filmmaker, who is currently making a film about the Newark mayoral race. It is my understanding from speaking with Mr. Curry and viewing his videotapes that Mr. Curry's attempts to cover the election have been unduly interfered with by those working for you or working at your direction. It is also my understanding that you and/or your staff are under the misapprehension that Mr. Curry making his film for Councilman Cory Booker. Mr. Curry has informed me that he is making this film as an independent documentary filmmaker and hopes to distribute it to the public by selling it to a major media outlet. Mr. Curry intends for his film to be a factually accurate representation of the events of the 2002 mayoral race. Because Mr. Curry's film is intended to cover the entire election period, he is not planning to release his film until well after the election on May 14.

Obviously, we recognize you have no obligation to provide Mr. Curry with special access to you or your campaign or to grant him interviews. However, you may not harass or obstruct Mr. Curry while he is in a public place in an effort to prevent him from filming while in such a public place.

On a number of occasions members of your security team attempted to stop Mr. Curry from filming in a public place by placing their hands over Mr. Curry's camera after you instructed them that you did not want Mr. Curry filming you. Furthermore, at the event where you announced your reelection bid, which was covered by numerous media outlets, Mr. Curry was asked to leave, and was escorted out by three to four people working for your campaign, one of whom identified himself as a police officer. Once outside these individuals asked Mr. Curry for identification and wrote down his license plate number.

We write to inform you that actions such as the ones described above constitute violations of Mr. Curry's First Amendment rights. Mr. Curry is entitled to engage in filming in public places, such as public streets, sidewalks, and parks. These are "traditional public forums," places that "time out of mind, have been used for purposes of assembly communicating thoughts between citizens, and discussing public questions." Hague v. CIO, 307 U.S. 496, 515 (1939). First Amendment interests are

*Ram*  
*Not Aware*  
*Ignore*

RECEIVED  
NP10  
2002 APR 29  
May 2, 2002  
PM 3:25

at their zenith in these areas. Perry Educ. Assn. v. Perry Local Education Assn., 460 U.S. 37, 45 (1983).

Courts have repeatedly held that the rights of photographers to take photographs in public cannot be unreasonably impeded. For instance, in Connell v. Town of Hudson, 733 F.Supp. 465 (D.N.H. 1990), the court held that "[a]ccording to principles of jurisprudence long respected in this nation, [police] could not lawfully interfere with [a photographer's] picture-taking activities unless [the photographer] unreasonably interfered with police and emergency functions." Id. at 470-71. Similarly, the court in Channel 10, Inc. v. Gumnarson, 337 F.Supp. 634 (D. Minn. 1972), held that, "it seems clear that employees of the news media have a right to be in public places and on public property to gather information photographically or otherwise."

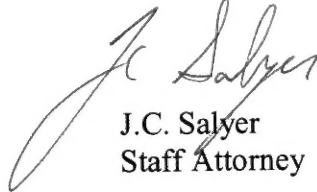
In Wolfson v. Lewis, 924 F.Supp. 1413 (W.D.Pa. 1996), the court stated that it was the "traditional rule that watching or observing a person in a public place, or taking a photograph of a person who can be observed from a public vantage point, is not generally an invasion of privacy." Id. at 1420. See also Wehling v. Columbia Broadcasting System, 721 F.2d 506, 509 (5th Cir.1983) (broadcasting a picture of plaintiff's residence which showed nothing more than what could be seen from a public street is not an invasion of privacy); Dempsey v. The National Enquirer, 702 F.Supp. 927, 931 (D.Me.1988) (a reporter's presence on a public thoroughfare and in a restaurant open to the public cannot constitute an intrusion upon seclusion of another); Machleder v. Diaz, 538 F.Supp. 1364, 1374 (S.D.N.Y.1982) (no liability for intrusion upon seclusion when defendant accosted and filmed plaintiff on the property of a corporation, a "semi-public" place, where he was visible to the public eye).

Simply put, you and your campaign do not have the authority to stop Mr. Curry from filming in public places, where he has the right to be present, regardless of how you feel about Mr. Curry or what you perceive his viewpoint to be. This is particularly true here, where Mr. Curry is filming important political events and public figures. As the United States Supreme Court stated regarding speech about public figures; "constitutional protection does not turn upon 'the truth, popularity, or social utility of the ideas and beliefs which are offered'" therefore even erroneous statements "must be protected if freedoms of expression are to have the 'breathing space' that they 'need ...to survive.'" New York Times v. Sullivan, 376 U.S. 254, 271-72 (1964). Thus, whether or not you agree with or like Mr. Curry's perceived point of view, he is completely within his rights to engage in First Amendment activity, including filming the Newark mayoral race, while in public forums. See also Borreca v. Fasi, 369 F.Supp. 906 (D.Hi. 1974) (holding that a government official could not single out or ban a particular reporter because he believed that reporter was biased or inaccurate).

Therefore, we ask that you provide written assurances that you and your staff will not obstruct Mr. Curry from filming his documentary. Because of the short amount of time before the election and because this interference is occurring on a continuing basis, as recently as April 30, 2002, I must insist that these assurances be provided by 5:00 p.m. on Friday, May 3, 2002. If we do not receive such assurances we are prepared to take legal action, including obtaining a Temporary Restraining Order, to protect Mr. Curry's constitutional rights.

I hope that this letter clears up any misunderstanding regarding Mr. Curry's filming the Newark mayoral race and that you will allow him to complete his project without further interference. If you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in cursive script, appearing to read "J.C. Salyer". The signature is written in dark ink and is positioned above the printed name and title.

J.C. Salyer  
Staff Attorney